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ABSTRACT

This document contains the report of the Committee on Education and Labor on bill H.R. 2908 to amend Title XI of the Education Amendments of 1978 relating to Indian education programs. The document contains a summary of the legislation, a description of the need for the legislation, its legislative history, a cost estimate, and a section-by-section analysis of the bill. The report delineates changes in existing law made by the bill. Major provisions of the bill simplify reporting requirements prior to school closures. The bill deletes provisions limiting the ability to take action against Bureau of Indian Affairs administrators for failure to implement Bureau standards and transferring the responsibility for the administration of contracts. This document clarifies that nothing in the 1984 amendments requires the provision of separate support services and inserts a provision authorizing advance funding, which can be used instead of the 1984 provision on forward funding. Finally, the report clarifies the policy affecting requirements on a number of the other 1984 provisions. The document contains the full text of the proposed legislation. (DHP)

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ED319556

99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
99-231

INDIAN EDUCATION TECHNICAL AMENDMENTS ACT OF 1985

JULY 26, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany H.R. 2908]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2908) to amend title XI of the Education Amendments of 1978, relating to Indian education programs, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

SUMMARY OF THE LEGISLATION

H.R. 2908, the Indian Education Technical Amendments Act of 1985, amends the Indian Education Act of 1978, as amended by the Indian Education Amendments of 1984. It makes technical changes and clarifying amendments to the statute to remedy a number of concerns raised by the Bureau of Indian Affairs and the Indian community.

Its major provisions simplify the requirements with respect to reporting requirements prior to school closures and make the provisions on school closure and attendance areas prospective in their effect. They delete provisions limiting the ability to take action against bureau administrators for failure to implement bureau standards and transferring the responsibility for the administration of contracts. They clarify that nothing in the 1984 amendments require the provision of separate support services and insert a provision authorizing advance funding, which can be used instead

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of the 1984 provision on forward funding. Finally, they clarify the policy or requirements on a number of the other 1984 provisions.

LEGISLATIVE HISTORY

H.R. 2908 was introduced by Congressman Kildee, with 12 cosponsors, on June 27, 1985. An identical bill was introduced in the Senate on the same day. On July 23, 1985, the Committee met and ordered the bill reported with amendments by unanimous consent.

NEED FOR THE LEGISLATION AND PROVISIONS OF THE BILL

A. BACKGROUND AND NEED

The school system operated by the Bureau of Indian Affairs involves over 180 programs and 40,000 students. It operates in 23 States. It has been plagued by recurring problems in the areas of support services and consistency of administration, to an extent that the education of many of these students has been negatively affected. As a Federal school system, and because of the special duty owed to Indian people by the United States government under the Trust responsibility, the Congress must take the responsibility for this situation.

During the 98th Congress, the Committee worked on a package of amendments affecting the administration of the Bureau of Indian Affairs school system. The amendments essentially placed limitations on the Bureau's discretion in the areas of school closure or program curtailment, establishment of attendance boundaries, and the provision of support services for Bureau of Indian controlled schools (including Facilities Management). They also included authority for forward funding of these programs, and a number of provisions relating to contract school standards and reporting, personnel, and other minor issues.

Two days after these amendments were enacted as part of P.L. 98-511, the Appropriations Committee placed language in the F.Y. 1985 Continuing Resclution prohibiting implementation. The stated reasons related to administrative concern regarding the feasibility of a number of provisions and the need for others.

H.R. 2908 recognizes these concerns and seeks to address them. It was developed through the efforts and cooperation of the Bureau of Indian Affairs, the Senate Select Committee on Indian Affairs, the Indian community, and other Congressional Committees and Offices.

These amendments will affect school programs. These programs begin during the August recess. Since it would not be a good idea to begin implementation of changes during a school year, failure to handle these changes expeditiously will mean that they could not take effect until the 1986-87 academic year.

B. EXPLANATION OF THE BILL

(1) Immunizations—In considering these amendments, the Committee reviewed the Bureau's request for an amendment requiring that the Indian Health Service provide all funding for the required innoculations. The Committee has not acted on such an amendment, because it views it as unnecessary. The funding for this re-

quirement shall follow the current pattern for this practice, which the Committee understands involves I.H.S. funding for immunization shots.

(2) Tribal Waiver—Due to a drafting error in the Indian Education Amendments of 1984, the second sentence of section 1121(d) was deleted. This amendment only reinstates this provision. It is a strictly technical amendment.

However, the Committee, in restating this authority by the Bureau, does not intend that it shall be without any limits. The Secretary will establish the parameters for "good cause" and review through the usual regulatory means, and these parameters will then be adhered to by all Bureau levels.

(3) Contract school standards—In the consideration of the two amendments to this section (particularly the amendment requiring technical assistance from the Secretary), it became clear that it is necessary for the Committee to clarify two points.

The standards developed by the Bureau under 20 U.S.C. 1121 (b) and (c) clearly do not apply to contract schools in any fashion UNLESS contract freely elect (under 20 U.S.C. 1121(e)) to have them apply. The rejection by the Committee of the Bureau's 1984 proposal to change this legal situation shows the Committee's continued support for this exemption. If any further evidence in this regard is needed, the Committee refers all interested parties to the Report accompanying H.R. 15, later P.L. 95-561 (H. Rpt. 95-1137, pages 118 and 173).

Secondly, and most importantly, as was stated in the report accompanying H.R. 11, later P.L. 98-511 (H. Rpt. 98-748, page 19), there are contract schools which have developed standards and submitted them to review by the Bureau through the P.L. 93-638 process of negotiation and review for the purposes of declination. These standards have been accepted by the Bureau for a number of years. They have been incorporated into the contract. The Committee restates that these standards are Bureau standards for the purpose of meeting this section. Modifications to these standards and technical assistance shall be carried out in a manner consistent with P.L. 93-638 practices, and instances in which the Bureau refuses to accept them shall be subject to the declination procedures.

(4) Contract school study—the purpose of this study is to yield a method for generating program, administrative and other cost figures which are consistent between contract schools and which are comparable to those produced by the Bureau's cost-accounting system. The purpose of the study is to generate a method (e.g. a system of conversion factors or definitions) which will allow the Congress and the Administration to compare the costs and needs among contract schools and between contract schools and the Bureau schools. Such information will be important as the future of contract schools and specific concerns, such as indirect cost needs, are discussed.

The Committee clearly states that this is not a study to require a uniform cost accounting/ fiscal control system for the contract schools. These schools already have such systems which meet specific requirements. Besides, such a requirement would, in all probability, lead to the imposition of a system which would resemble the Bureau's. There are two major problems with this outcome. The

Bureau's current accounting system is in need of substantial revision already. Additionally, the contract schools reflect many differences in size, sophistication and relationship to other tribal entities. Their fund accounting systems need to reflect these differences. Above all, this study is to be user sensitive and user-oriented. The Committee also stresses that, to the greatest extent possible, the results of this study not lead to increased workloads or reporting requirments for the schools affected. Modification of current P.L. 93-638 reporting requirements, rather than the addition of a new set of requirements, should be the method used.

The Committee also stresses that the study should be conducted in an objective fashion. If the Bureau should decide to do this study and produce this system "in-house", it is the Committee's clear intent that the Bureau consult with the Indian controlled contract schools which will be ultimately affected at every step in the process. Additionally, the Committee wishes to make clear that National Indian organizations continue to be its suggestion for the preferable contractor for this study. The Bureau's concern regarding the use of an Indian organization was carefully considered. The Committee retained this provision due to its desire to insure that the product of this study be user sensitive. If necessary, there is nothing in this section that precludes subcontracts between the Indian contractor and non-Indian entities for particular components that might require special expertise.

(5) On closures—The Committee stresses that it does not intend for the Bureau to define the term "active consideration" in such a restrictive fashion that it vitiates the protections afforded by this section. Also, a "substantial curtailment" is one which involves a decrease in a service to a significant percentage of the group who are defined by the service to be decreased, i.e. in geographical terms (cutback in bus service), by age or grade (cutting out a grade or restricting the size of a class), or by service provided (the closure of a dormitory restricting or terminating boarding operations). In arriving at the percentage that will be affected, only those who are receiving or who are eligible to receive, or who might reasonably receive the service in the immediate future shall be included in the computations. Therefore, when determining whether the termination of a bus route is "substantial curtailment" only those students who use bus service at a school site shall form the total upon which the comparison will be based. The percentage which represents a significant number shall be determined in each individual case, but in an case, a percentage in excess of 33% will be considered substantial.

At the Bureau's request, the Committee has included a provision for closures for unforeseen emergencies. The Committee intends that such emergency closures (e.g. for fire, flood, natural disaster) be temporary and in no case for more than one year except where special circumstances exist that preclude opening within the year. If such circumstances exist, closure could continue for a reasonable period beyond the year provided a report on the special circumstances is submitted to the affected tribe or tribes, the school board, and Congress. This provision is not to be used for closure of facilities that have, either deliberately or through neglect, been allowed to deteriorate to the point where a health or safety risk

occurs. If the Bureau decides to make a temporary closure, consolidation or substantial curtailment permanent in nature, the Bureau must use the regular statutory procedures.

The Committee is also sensitive to the concerns raised by the Navajo Tribe that past statutory requirements relating to "comments" and "consultation" by the Tribes and others has not lead to meaningful input. This is largely the result of Bureau practices: (1) that afford the opportunity for comment but which do not include meaningful review or incorporation of those comments, or (2) which do not involve comments until decisions have been substantially made (or even partially implemented). The Committee has not inserted the suggested specific requirements spelling out each step for consultation, since this rightly should be a matter for Administrative determination. Additionally, the efficiary of such a detailed enactment would be questionable. The remedy must be a matter of attitude, originating in the highest levels of the Bureau. The Committee prefers to state that with respect to the provisions of P.L. 95-561, particularly as amended by P.L. 98-511, current practices are unacceptable. The Bureau should institute the needed remedial actions, and thus avoid the need for very specific consultation requirements in the future.

(6) School boundaries—The Committee wishes to call attention to one particular facet of the Bureau's practices in establishing attendance areas. The Bureau has discussed establishing boundaries between Bureau programs and public school entities. In these discussions, the Bureau has repeatedly stated its intention to make these boundaries mutually exclusive, requiring attendance by some students at the public school, or, more accurately, prohibiting the attendance by those students at Bureau programs.

The Committee recognized the need to establish clear and exclusive attendance area boundaries in 1984. However, it is concerned that the Bureau, in establishing these, will only consider geographic factors and will ignore the patterns of practice and problems that may exist with respect to specific public schools serving reservations.

The Committee hastens to state that it is aware that many public schools give exemplary service to Indian students on Indian reservations. However, it is also a fact that there are pubic schools which do not provide adequate or equal services to their reservation based students or do not provide them on a consistent and year-around basis. When the Bureau establishes its attendance areas, it must take the specific facts regarding each instance into account. It shall not regard as exclusive any public school service area where the public school has not provided equal service in the past (i.e. where bus routes are not run on a consistent basis year-around or where bus service is unilaterally suspended for reservations during poor weather). This may be remedied by Bureau cooperation and assistance. However, concern for the students mandates that the problems be solved (or on their way to solution) before the attendance areas be treated as exclusive. Also, the Bureau should consider the same factors when determining the need for contract schools. Failure to do so would constitute grave neglect of its responsibility to Indian people.

Finally, the Committee stresses that attendance areas are more than mere lines on a map. The Bureau shall, in implementing these amendments, develop a process to allow students with special needs or who would benefit from special programs only offered in particular schools, to receive the consideration they need.

The Committee recognizes a unique situation on the Navajo reservation. The Navajo Tribe, pursuant to the Education Amendments of 1984, has established a Task Force with the intent of developing an attendance area system which includes all of the publically funded school operating on the reservation, i.e. BIA funded schools and State funded schools. The Committee is also aware that a waiver of the BIA established boundaries was in effect during the 1984–85 school year, since that system was not officially established until after the school year had begun. A situation could develop where students' educations would be disrupted by the implementation of the BIA boundaries in the school year 1985–86 and be further disrupted by the implementation of the Tribal system the following year. Students in some instances coud be forced to change school 2 years in a row.

The Committee directs the BIA to continue to cooperate with the Tribal boundaries initiatives and to take such measures as are necessary to prevent disruption in the educational program of individual students.

The Committee also recognizes that the contract schools on Navajo are included in the current BIA boundary system and sees no reason why this should not continue. There is nothing in the 1984 amendments or these amendments which would interfere with such cooperative efforts, where they have been mutually agreed upon.

(7) Contracting coordination—By deleting the transfer of contract functions to the Education Division and reinstating language that coordination should be greater, the Committee does not intend to signal an acceptance of the status quo. If improvements are not forthcoming, particularly as they relate to timeliness of action, the Committee will reconsider this option.

In deleting this provision, however, the Committee could not leave unaddressed the clearly inequitable situation that exists for a few applicants for new school starts. The Secretary is directed to review applications for new school contracts which were submitted prior to October 1, 1984 under the rules and applicable Bureau guidelines in effect when they were submitted. This means that the Bureau guidelines which are currently being formulated, which place a premium only on geographical factors, shall not and may not be used in any way in this determination. The Committee does not suggest what the ultimate determinations will be. However, it does feel that the unconscionable delays in reviewing the applications submitted, delays which clearly violated the Bureau's own regulations and good administrative practice, warrant this highest level immediate review. The Committee also feels this is warranted because at least one of these applicants, the Tiospa Zina tribal school on the Sisseton-Wahpeton reservation, is a viable, State accredited, and functioning program which stands in jeopardy due to the Bureau's failure to meet its own review timeline. In this case, substantial Federal funding, in the form of Indian Education Act

funds, and substantial Tribal funding, in the form of a permanent Building for this school, have already been expended. This money cannot be allowed to go to waste simply due to the Bureau's failure to act in a reasonable manner.

(8) Personnel sections—The Committee seriously considered concerns raised by the Bureau with respect to the effects of the provision dealing with personnel. This provision does not require or foster separate personnel services for the Education Division. In the area of personnel, all school level personnel activities which are supervisory and evaluative in nature (including the decisions relating to such activities as—who to hire and when, termination of a school employe [subject to the applicable rules and regulations], evaluation of employe performance and the acceptance of employes proposed for transfer) shall be under the control of the Education Division. This does not affect in any way the issues of processing of paperwork, provision of technical assistance re: rules and regulations or the handling of employe files and payroll actions. The Committee has made a clarifying amendment to Sec. 1126(b) which will solve the Bureau's concerns.

(9) Facilities Management—The Committee is aware that this provision has caused the most concern for those who have expressed reservations to the actions taken last year. The Committee once again states unequivocally that it was never its intent, nor is it now its intent, to foster, encourage, support or require a separate maintenance service for Bureau Education.

The Committee is recommending several minor changes to make this clear. The Bureau will establish the required system for computing maintenance budget needs and distributing the funds appropriated for operations and maintenance in such a manner that the needs will be computed "from the field up." This means that field officials, using guidelines established by the Assistant Secretary, will be at least initially responsible for computing their needs and reporting this to their superiors. Thus the aggregate figures produced in the Central Office will provide a realistic basis for a Budget Request. The Amendment does not require that the Bureau perform this function through the Education Division. However, Education Division input into this process, through recommendations and review is required.

The Committee intends that the Bureau will continue to distribute the funds appropriated in the operations and maintenance account in the manner currently prescribed, that is, without segregating any funds solely for the use of Education. What the amendment requires is that the Bureau compute, using the system described above, the funds which are included in the field distribution that can be reasonably stated to have been attracted by the education needs in each area and agency. These figures, further refined to an agency level, and where possible with a breakdown to school site costs will be given to the field education personnel only by the Director of the Office of Indian Education.

At the local level, the Committe intends that the Education person in charge meet with their counterpart in the Facilities Management. Working together (considering such components as fixed costs, energy and scheduled maintenance costs, needs identified by the FACCOMS system and by school level facilities maintenance

and education personnel, and other items) they will jointly establish a maintenance plan and timeline. The Facilities personnel, using this plan, will perform all work. However, the amendment is clear that on a regular basis (e.g. quarterly) education personnel will be required to certify that the work is being performed or will be performed. Continued availability of funds, to the extent the funds have been attracted by and can be reasonably foreseen to be intended for the maintenance of education facilities, will depend on this certification. However, the funds will actually continue to be handled by the Division doing so now. The Committee has left to the Assistant Secretary the development of a system for the resolution of any differences that may arise. However, it is the intent of the Committee that such a system include equitable representation of both the Facilities Management and Education divisions.

Nothing in this subsection is to be construed as to interfere with the normal procedures of contract schools so authorized to contract for facilities services and funds, as is currently authorized by P.L. 93-638.

The Committee has deleted the section dealing with control of education facilities, because it has received information that if the above plan is put into effect, it will be unnecessary. The Committee continues to intend that Bureau Educators be in control of the uses to which Bureau education facilities and their constituents (i.e. rooms) are put. This should be done consistent with health and safety factors, but education decisions in this respect should not be "second-guessed" by any other Bureau division.

(10) Allotment Formula—The Committee has withdrawn the clause requiring a provision within ISEF to fund 12 month school programs, as well as summer school programs. This withdrawal is in no way to be construed as a lack of support for summer enrichment and recreation programs.

The Committee is concerned by reports that summer school programs have been arbitrarily disapproved by the Bureau, both under Indian Student Equalization Formula and Chapter 1 funds. The Committee directs that local decisions with respect to summer school programs not be overturned without going through the appropriate process, where there is sufficient funding under I.S.E.F. or Chapter 1 to support them and the requirements of the program have been met. With respect to Chapter 1, the Bureau should treat programs uniformly.

(11) Forward funding—The Committee is aware that the early implementation of the 1984 amendment authorizing forward funding appears unlikely. This is largely due to the "transition year" effect, which means that the Budget outlay totals for the first year would reflect a "doubled amount". The Committee regrets this situation, since this "hump" effect is not really a double-funding, but a buy forward effect. The benefits of Forward funding are clear, and the Committee remains committed to its ultimate implementation.

However, to obtain what relief may be approved quickly, the Committee is amending the law to include an additional funding option, advance funding. This form of funding allows the Appropriations panel to include two amounts of money in one Appropriations Act, the first amount to be available immediately for the year the Act covers. The second amount would not be available for obli-

gation or expenditure until the fiscal year after the fiscal year covered by the Appropriations bill in which it is included. For instance, if there were two amounts in the F.Y. 1986 Appropriations Act, one designated by F.Y. 1986 and one designated for F.Y. 1987, the one designated for F.Y. 1987 could not be spent until October 1, 1986.

While the funds would not be available for expenditure, they would be available for distribution to the schools through a process of notice of allotments. Then, on October 1, 1986, they would become automatically available for distribution, without further administrative action.

The benefits are increased stability of funding for schools (facilitating planning), an earlier distribution for obligation, with stability insured against later "holds" or "transfers between accounts". Also, such a system would safeguard against education programs being squeezed should Appropriations not be enacted by October 1 of a year. In the Budget context, advance funding does not involve a transition year, since it does not involve the obligation or expenditure of funds in advance of the year for which they are appropriated. Thus there is no "double funding" or "hump" phenomena. The Committee hopes that the Appropriations Committees will implement this provision in the next Fiscal Year's Appropriations measure.

(12) The Committee has carefully reviewd the concerns regarding the creation of a local non-competitive procurement authority. It has decided that the amount initially authorized for such a process should be a fixed amount, not a percentage of the budget, and that it should be small enough to allow careful monitoring. The Committee also makes clear that the Assistant Secretary is to establish guidelines for the use of this money. However, the Committee intends that these guidelines not become so restrictive as to render this authority meaningless or a "bureaucratic nightmare". This is intended to be a fund to meet needs which are determined on a local basis, and no guidelines on its use should act against this intent.

Oversight

No findings or recommendations concerning oversight of the program authorized by the bill have been received by the Committee from the Committee on Government Operations.

Cost Estimate

The Congressional Budget Office has provided the following estimates of the costs which will be involved in implementing this legislation. The Committee concurs in these estimates and adopts them in compliance with clause 7 of rule XIII. No cost estimates have been received from any other Federal department or agency. The Congressional Budget Office letter follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 1985.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined the federal cost impact of H.R. 2908, the Indian Education Technical Amendments Act of 1985, as ordered reported by the House Education and Labor Committee July 23, 1985. This bill amends Title XI of the Education Amendments of 1978 regarding the Bureau of Indian Affairs (BIA) education programs by making technical amendments relating to BIA school boundaries, closings, consolidations, and standards. This bill would also change the authorization for appropriation from forward-funded to advance-funded.

Based on our analysis there would be no change in federal costs as a result of this bill. H.R. 2908 amends certain administrative procedures and guidelines for the operations of BIA schools included in the recently passed Education Amendments of 1984 (P.L. 98-511) and would not affect federal costs. P.L. 98-511 authorized the forward-funding of appropriations of these BIA programs; this bill changes that to advance-funding of appropriations. Both forward and advance funding provide for the appropriation of funds a year in advance but allow a slightly different timing in obligation of those funds. To date, Congress has only provided current-year funding for these programs.

This bill would not affect the budgets of state and local governments.

Please call me if you have any questions or have your staff contact Deborah Kalcevic (226-2820).

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT

Since this measure does not alter the expenditure of any funds, the Committee does not anticipate any inflationary impact if it is adopted.

SECTION-BY-SECTION ANALYSIS OF H.R. 2908

Sec. 1 states the title for the bill.

Sec. 2(a) reinstates the provision giving the Secretary final authority to establish standards for B.I.A. schools, accidentally deleted last year. Also requires Tribe to submit alternatives within 60 days of waiver.

Sec. 2(b) clarifies language on standards for contract schools to make provision applicable to existing programs (as well as new ones) and to allow the Bureau to do the required study either through contract or in-house. Also clarifies that the study is to involve reporting standards.

Sec. 2(c) deletes the limitation on the Secretary's right to discipline B.I.A. educators for failure to meet the proposed standards.

Sec. 2(d) changes the requirements on closures, consolidations, or curtailments of B.I.A. programs to be prospective in nature and to simplify the reporting requirements. Also moves the date of the report to Congress from May to August.

Sec. 3 changes the provision regarding the establishment of school attendance boundaries to make it prospective, but retains a presumptive right for tribes to petition for changes in the established boundaries.

Sec. 4(a) deletes the transfer of the contracting service functions to the Education division, but requires a review of all new school contract applications filed before Oct. 1, 1984. Also clarifies that separate personnel services for Education Division are not required.

Sec. 4(b) clarifies language on Facilities Management to make clear that separate services for the Education Division are not mandated. Also, deletes the transfer of control over education facilities to the Education Division.

Sec. 5(a) deletes the requirement that 12-month programs for Bureau schools be studied. Also, clarifies the language on supplemental pay costs.

Sec. 6 changes the Bureau's provision on forward-funding so that advance funding is also allowed. Also, changes the local non-competitive procurement authority from 10% of funds received to a set amount of $25,000 per annum. Also, clarifies that the amendment on Tribal Education Divisions and codes was to make it an eligible activity under 93-638, not a new program.

Sec. 7 clarifies that only schools are covered by the requirement for Inspector General audits.

Sec. 8 clarifies voluntary services provision in statute to be sure that the usual Workmen's Compensation and Tort Claims provisions apply and deletes contract schools from this provision (does not apply to them).

Sec. 9 renumbers statutory provisions, makes the Secretary's authority to establish stipends discretionary, not mandatory, accepts the Administration's proposals to clarify the proration of pay provision to protect the status quo for employee benefits, and deletes the provision on waiver of rent.

Sec. 10 establishes effective dates.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Education Amendments of 1978

* * * * * * *

TITLE XI—INDIAN EDUCATION

* * * * * * *

PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS

* * * * * * *

SEC. 1121. (a) * * *

* * * * * * *

(d) A tribal governing body, or the local school board so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c), where such standards are deemed by such body to be inappropriate or ill-conceived. The tribal governing body or designated school board shall [thereafter] , *within 60 days thereafter,* submit to the Secretary a proposal for alternative standards that takes into account the specific needs of the tribe's children. *Such revised standards shall be established by the Secretary unless such standards are specifically rejected by the Secretary for good cause and the Secretary notifies each affected tribe and local school board in writing of such rejection. Such rejection shall be final and not reviewable.*

(e)(1) * * *

(2) [Within two years of the initial contract for the provision of educational services under Indian Self-Determination and Education Assistance Act]. *Within two years after the date of enactment of the Indian Education Technical Amendments Act of 1985, or two years after the date of the initial contract for the provision of educational services under the Indian Self-Determination and Education Assistance Act, whichever is later,* each such school shall (A) be in compliance with the standards prescribed under subsection (a), or (B) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found. *The Secretary shall not rescind or fail to renew a contract because of this paragraph until at least one year after notifying the school of a failure to comply. During such one-year period, the Secretary shall render technical assistance to aid the school to comply.*

[(3) Within one year of the date of enactment of this paragraph, the Bureau shall, through contract with a national Indian organization, establish uniform fiscal control and fund accounting procedures for all contract schools. Such procedures shall yield data results comparable to those used by Bureau schools.]

(3) Within one year of the date of the enactment of the Indian Education Technical Amendments Act of 1985, the Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract schools. Such standards shall yield data results comparable to those used by Bureau schools.

(f) Subject to subsections (d) and (e), the Secretary shall begin to implement the standards established under this section immediate-

ly upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under this section. Such plan shall include, but not be limited to, detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards. [Failure to implement or meet such standards shall not serve as the basis for taking any personnel action against any individual if (1) the failure is related to inadequate resources (as determined under sections 1128 and 1129 of this title), and (2) the Secretary has not submitted the information required by this subsection and has not requested sufficient funds to cover the cost (as determined under such sections) of meeting such standards at the school concerned.]

(g)(1) Except as specifically required by statute, no school [operated by the Bureau of Indian Affairs on January 1, 1984, may be closed or its program curtailed] *or peripheral dormitory operated by the Bureau of Indian Affairs on or after the date of enactment of the Indian Education Technical Amendments Act of 1985 may be closed or consolidated or have its program substantially curtailed* unless done according to the requirements of this subsection, except that, in those cases where the tribal governing body, or the local school board concerned (if so designated by the tribal governing body), requests closure or consolidation, the requirements of this subsection shall not apply. *The requirements of this subsection shall not apply when a temporary closure, consolidation, or substantial curtailment is required by plant conditions which constitute an immediate hazard to health and safety.*

(2) The Secretary shall, by regulation, promulgate standards and procedures for the closing [or consolidation] , *consolidation, or substantial curtailment* of Bureau schools in accordance with the requirements of this subsection.

[(3) Such standards and procedures shall require that, whenever closure or consolidation of a school is under consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, designated local school board, and parents will be notified as soon as such consideration or review begins and kept fully and currently informed with respect to such consideration or review. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

[(4) Prior to ordering any such school closing or consolidation, the Secretary shall insure that a study is made of each Indian child's educational and (where applicable) social needs and that adequate alternative services are guaranteed. Such a study shall include a description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative of the tribe involved, and the Director of the Bureau

of Indian Affairs, Office of Indian Education Programs, with regard to such child.

[(5) Prior to taking any action to close or consolidate any such school, the Secretary shall make a full report to Congress describing the plans made (including schedules and plans for follow-up studies on the students affected), and the study and consultations undertaken pursuant to paragraph (4) of this subsection. No action may be taken in furtherance of any such proposed school closing or consolidation (including any action which would prejudice the personnel or programs of such school) until the end of the academic year following the academic year in which such report is made.]

(3) Such standards and procedures shall require that whenever closure, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board will be notified as soon as such consideration or review begins, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review. When a formal decision is made to close, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated local school board shall be notified at least 6 months prior to the end of the school year preceding the proposed effective date. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

(4) The Secretary shall make a report to Congress, the affected tribe, and the designated local school board describing the process of the active consideration or review referred to in paragraph (3). At a minimum, the report shall include a study of the impact of such action on the student population, with every effort to identify those students with particular educational and social needs, and to insure that alternative services are available to such students. Such report shall include the description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students. No irreversible action may be taken in furtherance of any such proposed school closure, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) until the end of the first full academic year after such report is made.

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SCHOOL BOUNDARIES

SEC. 1124. (a) The Secretary shall, in accordance with this section, establish separate geographical attendance areas for each Bureau school.

[(b) No attendance area shall be established with respect to any such school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been given one year from the date of enactment of the Indian Education Amendments of 1984 to propose such boundaries. Such proposed boundaries shall be accepted unless the Secretary finds, after

consultation with such body or board, that such boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the programs affected.]

(b) On or after the date of enactment of the Indian Education Technical Amendments Act of 1985, no attendance area shall be changed or established with respect to any such school unless the tribal governing body or the local school board (if so designated by the tribal governing body) has been (i) afforded at least six months notice of the intention of the Bureau to change or establish such attendance area, and (ii) given the opportunity to propose alternative boundaries. Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs.

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BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

SEC. 1126. (a) * * *

(b) The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau, including (but not limited to) school or institution custodial or maintenance personnel. [All contract functions relating to education (including those pursuant to the Indian Self-Determination and Education Assistance Act) shall be supervised by the Director of the Office. Subject to the provisions in subsection (c), nothing in this Act shall be construed to require the provision of separate support services for Indian education.] *The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau Offices and the Office to facilitate the consideration of all contract functions relating to education, except that the Secretary shall review the applications for the new school starts which were filed with the Bureau before October 1 1984, under the rules and guidelines in effect on the date the application was filed. Nothing in this act shall be construed to require the provision of separate support services for Indian education.*

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(d)(1) The Assistant Secretary shall submit in the annual Budget a plan—

(A) for school facilities to be constructed under the system required by section 1125(c); [and]

(B) for establishing priorities among projects and for the improvement and repair of education facilities, which together *shall form the basis for the distribution of appropriated funds*[.]; *and*

(C) including a 5-year plan for capital improvements.

(2) The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. [Such program shall be implement-

ed by the Director of the Office.] Such program shall include, but not be limited to—

(A) a method of computing the amount necessary for each education facility;

(B) similar treatment of all Bureau and contract schools; [and]

(C) [the] *a notice of an* allocation of appropriated funds from the Director of the Office directly to the agency superintendents for education, or to the area education program administrators in the case of multitribal boarding schools located off reservation [.]; *and*

(D) a system for the conduct of routine preventive maintenance.

The agency superintendents for education, or the area education program administrator in the case of multitribal boarding schools located off reservation, shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance personnel who are under the authority of the agency superintendent or area directors, respectively. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made in this regard by the agency superintendents for education and by the area education program administrators, except that no funds from this program may be [expended or transferred] *authorized for expenditure* by an agency superintendent for education or by an area education program administrator unless such superintendent or administrator is assured that the necessary maintenance has been, or will be, provided in a reasonable manner. Subject to the requirements of subsection (b) of this section, nothing in this Act shall be construed to require the provision of separate operations and maintenance personnel for the Office.

[(3) The Director of the Office shall supervise all Bureau education facilities, including local Bureau housing constructed for the purpose of housing Bureau personnel at the school site.]

[(4) *(3)* The requirements of this subsection shall be implemented within 270 days following the date of enactment of the Indian Education *Technical* Amendments [of 1984] *Act of 1985.*

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ALLOTMENT FORMULA

SEC. 1128. (a) The Secretary shall establish, by regulation adopted in accordance with section 1138, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) the number of Indian students served and size of the school;

(2) special cost factors, such as—

(A) Isolation of the school;

(B) need for special staffing, transportation, or educational programs;

(C) food and housing costs;

(D) maintenance and repair costs associated with the physical condition of the educational facilities;

(E) special transportation and other costs of isolated and small schools;

(F) the costs of boarding arrangements, where determined necessary by the tribal governing body or designated local school board;

(G) costs associated with greater lengths of service by educational personnel; *and*

(H) special programs for gifted and talented students; [and]

[(I) costs associated with operating education and recreational programs on a 12-month basis;]

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[(e) The Director of the Office shall establish a separate fund from which monetary awards and quality step increases for employees shall be paid. Such payments shall not affect school allotments under this section.]

(e) Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

UNIFORM DIRECT FUNDING AND SUPPORT

SEC. 1129. (a)(1) Within six months after the date of enactment of this Act, the Secretary shall establish, by regulation adopted in accordance with section 1138, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 1128. *Amounts appropriated for distribution under this section may be made available under paragraph (2) or under paragraph (3), as provided in the appropriation Act.*

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 1128, amounts appropriated in the appropriations Act for any fiscal year shall become available for obligation by the affected schools on October 1 of the fiscal year for which they are appropriated without further action by the Secretary, and shall remain available through six months of the succeeding fiscal year. In order to effect the transition to the advance funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriations Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under section 1128 of 75 per centum of such appropriations, based on the school's student count for the preceding academic year; and

(ii) publish no later than November 1 of the fiscal year for which funds are appropriated the allotments to be made from the remaining 25 per centum, adjusted to reflect actual student

count, such funds to be immediately available for obligation by the affected schools.

[2]*(3)*(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by [this section] *section 1128*, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on July 1 of the fiscal year in which they are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year. In order to effect a transition to the forward funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under [this section] *section 1128* of 85 percent of such appropriation; and

(ii) publish, no later than September 30 of such preceding fiscal year, the allotments to be made under [this section] *section 1128* of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

[(3) Notwithstanding] *(4) Pursuant to guidelines established by the Assistant Secretary, notwithstanding* any law or regulation governing procurement by Federal agencies, the supervisor of each school receiving funds under [this section] *section 1128* shall, subject to school board approval, have the authority to expend no more than [10 percent] *$25,000 annually* of the funds allotted by [this section] *section 1128* to procure supplies and equipment, [with or] without competitive bidding.

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(c) Funds for self-determination grants under section 104(a)(2) of the Indian Self-Determination and Education Assistance Act shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement. The Secretary [shall institute a program] *may approve applications* for funding tribal divisions of education and the development of tribal codes of education *from funds appropriated pursuant to section 104(a) of such Act.*

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ANNUAL REPORT

SEC. 1136. (a) * * *

(b) The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted of [the Bureau, the Office, and] each Bureau school

at least once in every three years. Audits of Bureau schools shall be based upon the extent to which such school has complied with its local financial plan under section 1129.

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VOLUNTARY SERVICES

SEC. 1140. Notwithstanding section 1342 of title 31, United States Code, [an officer or employee of the Bureau or the Office] *the Secretary* may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau [and contract] schools. Nothing in this title shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees. *An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.*

PRORATION OF PAY

SEC. [1141.] *1140A.* (a) Notwithstanding any other provision of law, *including laws relating to dual compensation,* the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school-year over the entire twelve month period. Each educator employed for the academic school-year shall annually elect to be paid on a twelve month basis or for those months while school is in session. No educator shall suffer a loss of pay or benefits, *including benefits under unemployment or other Federal or federally-assisted programs,* because of such election.

(b) During the course of such year the employee may change election once.

(c) That portion of the employee's pay which would be paid between academic school years may be paid in lump sum at the election of the employee.

(d) For the purposes of this section the terms "educator" and "education position" have the meaning contained in section 1131(n)(1) and (n)(2) of this title. This section applies to those individuals employed under the provisions of section 1131 of this title or title 5, United States Code.

EXTRACURRICULAR ACTIVITIES

SEC. [1142.] *1140B.* (a) Notwithstanding any other provision of law, the Secretary [shall provide] *may provide, for each Bureau area,* a stipend in lieu of overtime premium pay or compensatory time off. Any employee of the Bureau who performs additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend. Such stipend shall be paid as a supplement to the employee's base pay.

[(b) The amount of such stipends shall be determined at the area level.]

[(c)] *(b)* If an employee elects not to be compensated through the stipend established by this section, the appropriate provisions of title 5, United States Code, shall apply.

[(d)] *(c)* This section applies to all Bureau employees, whether employed under section 1131 of this title or title 5, United States Code.

HOUSING

[SEC. 1143. (a) The Secretary shall continue to apply rental rates for employee housing in accordance with all applicable laws and regulations. Proceeds from rental receipts shall be used for the improvement and repair of employee quarters.

[(b) Notwithstanding any other provision of law, the agency superintendent for education, or (for boarding schools located off-reservation) the area education program administrator, shall have the authority to waive up to 90 percent of the rental rate for educators on school-wide basis to aid the school in recruiting and retaining educators. Decisions on rent waivers will be made after consultation with the appropriate level school board and the employees. Such superintendent's or administrator's decision (as the case may be) on the need for this assistance in recruitment and retention is final and not reviewable.

[(c) During periods when schools are not in session and educators have been placed in non-pay status, all rents payable by those educators shall be waived.

[(d) For the purposes of this section the term "educator" has the meaning contained in section 1131(n)(1) of this title. This section applies to those individuals employed under both the provisions of section 1131 of this title and title 5, United States Code.]

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